

Appl. No.: 09/720,173
Amdt. dated 12/27/2005
Reply to Office action of October 31, 2005

REMARKS/ARGUMENTS

Claims 2, 5-9, 11, 12, 15, 16, 18-24, 26, 27, and 29-36 are pending. All pending claims were rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/50219 to Johnstone in view of U.S. Patent No. 4,680,207 to Murray. Additionally, Claims 2, 5-9, 11, 12, 15, and 21-24 were rejected as being unpatentable over WO/94/04419 to Martin-Cocher et al. in view of Murray.

I. Rejections Based on WO 98/50219 to Johnstone

Applicant has now carefully analyzed the status of Johnstone, and Johnstone in fact does not constitute prior art to the present application, as the following analysis will show.

Johnstone was published based on a PCT application filed on 1 May 1998. Since the international filing date was before November 29, 2000, the old version of 35 U.S.C. 102(e) in effect as of 28 November 2000 applies to Johnstone with respect to its effect as prior art under 102(e). That version of 102(e) provided that a *patent* granted on an international application by another had an effective prior-art date as of the date when the requirements of section 371(c)(1), (2), and (4) were fulfilled. However, the PCT publication itself had no prior-art effect under 102(e). Accordingly, Johnstone cannot qualify as prior art under 102(e).

As for U.S. Patent No. 6,383,430 which issued from the national-phase application based on WO 98/50219, it has a 371(c) date (which is also the 102(e) date, per the old version of section 102(e)) of 1 November 1999. However, the present application's Australian priority date of 23 June 1998 is earlier than the 102(e) date of the '430 patent, and hence the '430 patent is not prior art under 102(e).

Finally, the PCT publication WO 98/50219 has a publication date of 1 November 1998, which is not more than one year before the present application's international filing date of 23 June 1999 (i.e., the effective U.S. filing date), and therefore the PCT publication is not prior art under 35 U.S.C. 102(b). Although the PCT publication was published before the effective U.S. filing date of the present application, the Australian priority date of 23 June 1998 is earlier than

the PCT publication. Additionally, the Johnstone publication is the present inventor's own work. Therefore, Johnstone cannot be prior art under 102(a).

Thus, the Johnstone PCT publication is not prior art to the present application under any section of 35 U.S.C. section 102. Accordingly, the rejections based on Johnstone are erroneous and should be withdrawn.

Applicant respectfully requests, in view of the erroneous application of Johnstone as prior art in the final Office Action, that the finality of the Office Action be withdrawn and/or that the minor amendments to the claims above (which do not raise any new substantive issues) be entered and considered.

II. Rejections Based on Martin-Cocher and Murray

Applicant has amended Claim 2 and the other independent claims to delete "cold" in order to improve clarity, and to further clarify that the biaxial stretching of the film increases the length and width of the film.

Amended Claim 2 requires the step of "stretching said member at atmospheric temperature biaxially beyond its yield point to decrease its thickness and increase its length and width". Martin-Cocher does not disclose such a step. With respect to the temperature at which stretching takes place, Martin-Cocher is silent.

Murray teaches stretching a film at temperatures well above atmospheric temperature. More particularly, Murray discloses stretching a film tube immediately after extrusion. The stretching occurs over the tapered mandrel **15** immediately after the film is extruded as molten thermoplastic resin (col. 8, lines 60-61). The cooling air ring **14** cools the film temperature to between 135° C and 150° C immediately before the cooling cylindrical mandrel **12** (col. 9, lines 6-8). The temperature of the mandrel **12** is said to be 85° C, with the purpose being to chill the film to a temperature below the crystalline melting point, i.e., below about 121° C. The film passing over the tapered stretching mandrel **15** therefore is generally below 121° C but it remains

significantly hot and certainly could not be said to be at atmospheric temperature. Murray indicates that the temperature of the film prior to entry between the nip rolls 13 is rapidly reduced to about 60° C (col. 9, lines 27-28). Thus, upstream of the nip rolls 13 at the stretching mandrel 15 the film temperature is higher than 60° C. This is much hotter than “atmospheric temperature” as claimed.

Therefore, neither Martin-Cocher nor Murray discloses the step of biaxially stretching the film at atmospheric temperature as claimed. For at least this reason, the rejections based on these references should be withdrawn.

Additionally, Claim 2 requires the step of partially relaxing the stretched film web member by between 5 and 20% of its total stretched length. Martin-Cocher in Fig. 3A discloses stretching a film by 150% of its original length, such that for example a sample with a length of 100 mm has a stretched length of 250 mm. The length after relaxation is 75% longer than its original length, i.e., 175 mm. Thus, the film was relaxed by 75mm out of 250 mm, or 30% of its stretched length. Therefore, Martin-Cocher does not disclose or suggest relaxing the film web by between 5 and 20% of its stretched length as claimed.

With respect to Murray, there is no disclosure of any form of relaxation, let alone a partial relaxation in the specific range of between 5 and 20% of the total stretched length.

Thus, this additional feature of Claim 2 is neither taught nor suggested by Martin-Cocher and/or Murray.

Claim 2 also includes the step of partially relaxing the film web member transverse to the longitudinal stretching direction. There is no teaching in either Martin-Cocher or Murray of performing such a transverse relaxation step. Martin-Cocher is essentially concerned only with longitudinal stretching, and discloses only longitudinal partial relaxation. Further, as already noted, Murray does not disclose any form of relaxation. Thus, the cited references do not teach or suggest the transverse relaxation as claimed.

Finally, neither Martin-Cocher nor Murray teaches the formation of a film web that has one or both of improved resistance to degradation from UV light radiation and improved resistance to oxygen or other gas transmissivity. There is no mention of either of these improved properties in Martin-Cocher or Murray, which are only concerned with improving the tensile strength of the web.

From the above remarks, it is apparent that Martin-Cocher and Murray fall far short of teaching several of the steps of Claim 2. Accordingly, Claim 2 is patentable over these references.

Independent Claims 9, 11, 15, 18, 26, 27, 31, and 35 have been amended in a fashion similar to Claim 2. Each of these claims, like Claim 2, requires biaxial stretching at atmospheric temperature and partial relaxation by between 5 and 20% of the total stretched length and also partial relaxation in the transverse direction, as discussed above. Therefore, for substantially the same reasons given for Claim 2, each of these other independent claims likewise is patentable over the cited references.

Additionally, independent Claim 15 includes the step of applying the plastics material film to be wrapped in at least one layer with at least sufficient applied further tension to form a wrapping envelope with an anaerobic atmosphere therewithin. Independent Claim 18 similarly is directed to the formation of an anaerobic atmosphere within the wrapped silage bale. Martin-Cocher is primarily concerned with the wrapping of palletized loads, and is not concerned with providing an anaerobic atmosphere as claimed. Murray likewise does not mention providing an anaerobic atmosphere in his thermoplastic sack. Thus, these claims are patentable for these additional reasons.

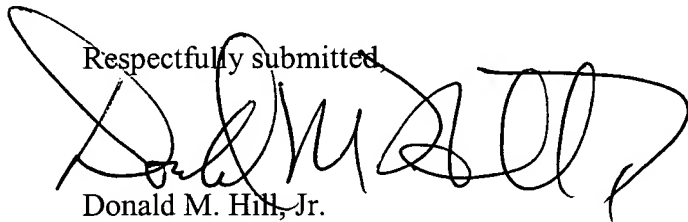
Conclusion

Based on the above amendments and remarks, Applicant respectfully submits that the claims are patentable over the cited references, and the application is in condition for allowance.

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It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefor (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

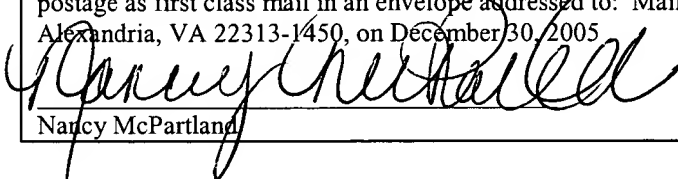


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